

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

CHRISTOPHER PARISH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO: 3:07-CV-452-RL
	)	
CITY OF ELKHART, INDIANA,	)	Judge Lozano
STEVE REZUTKO, STEVE AMBROSE and	)	
TOM CUTLER,	)	
	)	
Defendants.	)	

**PROPOSED PRETRIAL ORDER**

Pursuant to the order of the Court, the attorneys for the parties to this action will appear before the United States District Judge Rudy Lozano at Hammond, Indiana, on October 8, 2010 at 12:30 p.m. for a conference under Rule 16 of the Federal Rules of Civil Procedure.

Per this Court's order, the parties have met in-person and exchanged emails in an effort to timely prepare this Pre-Trial Order. However, the parties continue to disagree as to the number of Plaintiffs in this case and to the claims remaining. Mr. Parish maintains that there are multiple plaintiffs and that each plaintiff asserts both federal and state law claims. The defendants maintain that Mr. Parish is the sole remaining plaintiff and that there are no remaining state law claims. Therefore, this Pre-Trial Order is submitted with this disagreement in mind.

Plaintiffs are represented by counsel Jon Loevy and Heather O'Donnell of Loevy & Loevy, as well as William Hodes. Defendant City of Elkhart, is represented by counsel Martin W. Kus, Matthew J. Hagenow, Michelle L. Shirk and Nicholas T. Otis of Newby, Lewis, Kaminski & Jones, LLP. Defendants Steven Rezutko, Steven Ambrose, and Tom Cutler are represented by Lynn Kalamaros and Andrew Williams of Hunt Suedhoff Kalamaros LLP.



Thereupon, the following proceedings were had and the following engagements and undertakings arrived at:

A. Jurisdiction

Jurisdiction as to Plaintiff Parish's 42 U.S.C. §1983 claim was conceded by counsel and found by the Court to be present. Defendants dispute that there is jurisdiction over federal claims brought by the remaining Plaintiffs. Plaintiffs maintain that there is jurisdiction over the state law claims, while Defendants deny this Court has jurisdiction over Plaintiff's Indiana law claim for intentional infliction of emotional distress for the reasons set forth in their currently pending Motions to Dismiss, to which Plaintiffs have responded. Defendants further deny that the remaining Plaintiffs have state law claims.

B. Claims at Issue

The case is at issue on the complaint and the answer. Plaintiffs claim that Defendants Steven Rezutko, Steven Ambrose, Tom Cutler, and the City of Elkhart violated their federal constitutional rights. These claims are brought pursuant to 42 U.S.C. §1983. Plaintiffs also allege that Defendant City of Elkhart is responsible for the actions of its employees in intentionally or recklessly causing the Plaintiffs severe emotional distress. These claims are brought under Indiana law. The Defendants deny all of Plaintiffs' claims and deny that there are any remaining claims by anyone other than Mr. Parish.

C. Pending Motions

The Defendants have currently pending Motions to Dismiss as to Plaintiff Parish's Indiana law claims for intentional inflection of emotional distress. This Court's order on such motions will determine whether these claims remain at issue as to all plaintiffs. Plaintiff Parish's 42 U.S.C. §1983 claim is not affected by the outcome of these motions.



D. Plaintiffs' Contentions

Plaintiffs contend that the Defendants violated Mr. Parish's constitutional right to a fair trial by manipulating the evidence to suggest falsely that he was guilty of a crime he did not commit. Defendants also allegedly withheld and caused to be withheld a substantial amount of *Brady* material and caused Mr. Parish to be falsely identified pursuant to unduly suggestive identification procedures. All of the Plaintiffs suffered injuries as a result, including loss of affection and consortium.

Plaintiffs further allege that Defendant City is liable because the foregoing occurred as a result of the City's policies and practices, including the institutional practice of failing to document exculpatory materials and in conducting flawed and unduly suggestive identification procedures, as well as the lack of adequate training on the foregoing issues, and the deliberate indifference of municipal policy makers to the Plaintiffs' constitutional rights and to these types of violations on an institutional basis. Plaintiffs also allege that that the City is liable under the state law theories set forth in the complaint, including damages for loss of affection and consortium.

As a result of all of the foregoing, Plaintiffs allege that they suffered substantial damages associated with Mr. Parish's wrongful conviction and its aftermath.

E. Defendants Steven Rezutko, Steven Ambrose, and Tom Cutler's Contentions

The Defendant Officers deny all of the plaintiff's claims against them and contend that they did not, either jointly or individually, violate any of Christopher Parish's rights, Constitutional or otherwise. The Defendant Officers contend that the investigation of the robbery and shooting of Michael Kershner, which resulted in the Mr. Parish's conviction and incarceration, was conducted in an appropriate manner and afforded Mr. Parish Constitutionally



sufficient due process of law. The Defendant Officers, neither individually nor in concert, used any improper or suggestive interview or photo identification techniques. Mr. Parish was positively identified as a perpetrator in the robbery and shooting of Michael Kershner by the witnesses to the crime. The identification of Mr. Parish by the witnesses was made without any suggestions or coercion by any of the Defendant Officers. No evidence in the case was destroyed, and all evidence was turned over to the Elkhart County Prosecuting attorney.

Following a review of the evidence collected, the Elkhart County Prosecuting Attorney made the independent decision to charge and prosecute Mr. Parish. Following the presentation of evidence by the prosecutor and counsel for Mr. Parish, the jurors unanimously determined that Mr. Parish was guilty of the crimes alleged. Mr. Parish's conviction was overturned by the Indiana Court of Appeals on the basis of the ineffective assistance of Mr. Parish's criminal defense counsel.

The Defendant Officers further contend that they are entitled to qualified immunity. No act or omission by any of the Defendant Officers rose to the level of a violation of the Mr. Parish's Constitutional rights.

Finally, the Defendant Officers contend that Mr. Parish is not entitled to any damages, compensatory, punitive or nominal.

#### F. Defendant City of Elkhart's Contentions

Defendant City of Elkhart denies all of Parish's claims. The City of Elkhart contends that Parish was not deprived of the right to a fair criminal trial and that his conviction was not wrongful. Parish was identified before and at trial by multiple eyewitnesses, most of whom testified against him at trial. He had a fair opportunity to cross-examine these witnesses and to present witnesses of his own as part of his defense case.



Defendant City of Elkhart further contends that the investigation that led to Parish's arrest was proper, that no exculpatory evidence was withheld, and that the line-ups used in by the witnesses were not unduly suggestive. The City also denies that it had any policy or custom of allowing officers to destroy exculpatory evidence, engaging in suggestive photo arrays, or of displaying "deliberate indifference" to constitutional violations by failing to train its police officers.

The City of Elkhart further contends that any deficiencies at Parish's trial were the result of his receiving ineffective assistance of counsel, as determined by the Indiana Court of Appeals in its decision to reverse his conviction in 2005. After the conviction was reversed, the State of Indiana, through its prosecuting attorney, decided to not retry Parish.

Finally, The City of Elkhart also denies that it caused an intentional infliction of emotional distress with respect to Parish or any other person.

The City of Elkhart contends that Parish should recover no award of money damages whatsoever for his claims.

#### G. Agreed Facts

The following facts are established by admissions in the pleadings or by stipulation of counsel:

1. Christopher Parish was arrested on October 31, 1996.
2. On June 26, 1998, after a jury trial, Mr. Parish was convicted of charges of Attempted Murder, a Class A felony, and Robbery Resulting in Serious Bodily Injury, a Class A Felony.
3. On December 6, 2005, the Indiana Court of Appeals vacated Mr. Parish's conviction and remanded his case for a new trial.



4. Following remand, the State of Indiana did not re-try Mr. Parish, and the charges against him were eventually dismissed.

5. The Defendant officers were acting within the course and scope of their employment at all times related to the events in question.

#### H. Contested Issues of Fact

The contested issues of fact are the circumstances of the shooting and the police investigation that led to the criminal charges and conviction of Christopher Parish, and whether the alleged violations of Plaintiffs' rights were caused by the Defendants and/or the City's policies and practices; and the extent of damages that the plaintiffs are entitled to recover, if any. As stated, the Defendants also contest that the Plaintiffs other than Mr. Parish have any claims at all.

#### I. Contested Issues of Law

Whether, based upon the facts, the defendants violated the plaintiffs' constitutional rights and rights under state law; whether plaintiffs other than Chris Parish have surviving claims; and whether the individual officers are entitled to qualified immunity.

#### J. Trial Exhibits

##### 1. Plaintiffs' Exhibits

1. Photos of Chris Parish
2. Defendants' responses to Plaintiffs' interrogatories.
3. Defendants' response to Plaintiffs' requests to admit.
4. Defendants' response to Plaintiffs' requests for production.
5. Berrian County Sheriff's subpoenaed documents
6. Retzuko report, 1/30/97



7. Katowich report, 10/29/96
8. Bourdon report, 10/30/96 11/15/96
9. Posthuma report
10. Lab report to Bourdon - 2002
11. Tech report (DeJong) for Kershner shooting
12. Lab report to Bourdon re: J-hat (2004)
13. DeJong police report
14. Eddie Love statement
15. composite sketches
16. police media fax for information
17. Lab report to Bourdon, 76/17/97
18. waivers of search/seizure
19. lab request for hair DNA
20. Photo spreads
21. Witness statements
22. Eddie Love statement 1/8/97
23. Stellana Neal statement
24. Johlanis Ervin statement and associated documents
25. Eddie Love statement, 1/29/04
26. Bryant Wheeler statement
27. statement (sworn) of Kershner
28. statement (sworn) of Dolph
29. statement (sworn) of Ackley



30. statement (sworn) of Canell
31. statement (sworn) of Smallwood
32. statement of Debery Coleman
33. Debery Coleman police report
34. Eddie Love failure to appear documents
35. Michael Ervin photo
36. Johalini Ervin photo
37. Photo of Parish from in 1991
38. Notice of alibi
39. Department of motor vehicles records re: car
40. Blake McKinney statement
41. Criminal court orders
42. State's motion to dismiss charges against Parish
43. Order of dismissal of charges against Parish
44. juror notes & response
45. Criminal history for Keith Cooper
46. Order on Cooper's post-conviction relief
47. Stipulation re: DNA from Cooper case
48. Ambrose's Chancie Stewart memo from Cooper file
49. Crime Scene photos from the apartment
50. DeJong photos from the hospital
51. Bourdon photos of the car
52. Bourdon photos of the apartment



53. Retzuko' (excerpts) employment file
54. Ambrose's (excerpts) employment file
55. Cutler's (excerpts) employment file
56. Bourdon's request for evidence form
57. Criminal histories for Eddie Love, Michael Kershner and Jason Ackley
58. Gun receipt documents
59. Elkhart PD document manual
60. Parish letters
61. Bullet fragments from scene
62. J-Hat
63. Parish arrest report
64. Cooper identification documents
65. Information(s) charging Murder
66. Photo lineups (signed)
67. Photo lineups (unsigned)
68. Each of the non-objected to Exhibits listed by the defendant City of Elkhart, including any for which Plaintiffs' objections are overruled
69. Each of the non-objected to Exhibits listed by the individual defendants, including any for which Plaintiffs' objections are overruled

**Marked For Identification Only**

70. Elkhart's Investigation file for the Kershner shooting.
71. Transcripts from Parish criminal trial
72. Transcripts from Parish post-conviction
73. Exhibits from Parish criminal trial



74. Andrew Scott's Rule 26 report
75. Andrew Scott's c.v.
76. Elkhart duty rosters
77. Petition for post-conviction relief (and exhibits)
78. Record of Proceedings, Parish criminal proceedings
79. Cooper letter to Towns
80. Prugh report

2. Defendants Steven Rezutko, Steven Ambrose, and Tom Cutler's Exhibits

1. Elkhart Police Department Criminal Investigation Report & Supplementary Report on Offense, October 29, 1996, Case No. 96-303-0189, prepared by Officer Todd Katowich.
2. Elkhart Police Department Supplementary Report on Offense, January 30, 1997, Case No. 96-303-0189, prepared by Det. Steve Rezutko.
3. Elkhart Police Department Supplementary Report on Offense/Technician Report, November 15, 1996, Case No. 96-303-0189, prepared by Det. Tech. Joel Bourdon.
4. Elkhart Police Department Supplementary Report on Offense, October 30, 1996, Case No. 96-303-0189, prepared by Det. Michael Posthuma.
5. Elkhart Police Department Tech Report, October 29, 1996, Case No. 96-303-0189, prepared by Officer Mark DeJong.
6. Composite Drawing from Elkhart Police Department Case No. 96-303-0189, dated November 15, 1996.
7. Composite Drawing from Elkhart Police Department Case No. 96-303-0189, labeled Confidential Information.
8. October 30, 1996 News Media Release from the Elkhart Police Department.
9. Christopher Parish photo # 902831, Elkhart Police Department dated 09-09-91.
10. Christopher Parish photo # 902831, Elkhart Police Department, dated 11-17-93.
11. Christopher Parish photo # 902831, Elkhart Police Department dated 04-07-94.



12. October 29, 1996 Written Statement of Eddie L. Love from Elkhart Police Department Case No. 96-303-0189.
13. November 4, 1996 Photo Lineup and statement signed by Eddie Love from Elkhart Police Department Case No. 96-303-0189.
14. January 8, 1997 Written Statement of Eddie L. Love from Elkhart Police Department Case No. 96-303-0189.
15. October 29, 1996 Written Statement of Jennifer A. Dolph from Elkhart Police Department Case No. 96-303-0189.
16. October 30, 1996 Written Statement of Jennifer Dolph from Elkhart Police Department Case No. 96-303-0189.
17. October 30, 1996, Photo Identification initialed by Jennifer Dolph from Elkhart Police Department Case No. 96-303-0189.
18. November 12, 1996 Written Statement of Jermain E. Bradley from Elkhart Police Department Case No. 96-303-0189.
19. October 29, 1996 Written Statement of Jason G. Ackley from Elkhart Police Department Case No. 96-303-0189.
20. January 8, 1997 Statement of Michael Kershner, from Elkhart Police Department Case No. 96-303-0189.
21. January 29, 1997 Written Statement of Michael Kershner from Elkhart Police Department Case No. 96-303-0189.
22. October 30, 1996 Written Statement of Nona V. Canell from Elkhart Police Department Case No. 96-303-0189.
23. October 30, 1996 Photo Identification initialed by Nona V. Canell from Elkhart Police Department Case No. 96-303-0189.
24. Arrest records of Christopher Parish, October 31, 1996, including all reports, forms and booking photo.
25. November 15, 1996 Compusketch interview questioning of Nona V. Canell from Elkhart Police Department Case No. 96-303-0189.
26. January 8, 1997 Statement of Nona Canell, from Elkhart Police Department Case No. 96-303-0189.



27. Elkhart Police Department Supplementary Report, October 30, 1996, prepared by Ptlm. Brian Prugh.
28. January 29, 1997 Written Statement of Nona V. Canell from Elkhart Police Department Case No. 96-303-0189.
29. February 10, 1997 Written Statement of Debery Coleman from Elkhart Police Department Case No. 96-303-0189.
30. February 1, 1997 Letter from Keith Cooper to Captain Larry Towns from Elkhart Police Department Case No. 96-303-0189.
31. Elkhart Police Department Supplementary Report, November 19, 1995, from Elkhart City Police Department Case No. 96-303-0189, prepared by Detective Steve Ambrose.
32. The expert report of Deborah Bayer.
33. Photo Pak #'s 36139 and 36140, from Elkhart Police Department Investigative File # 96-303-0189, dated 10-29-96.
34. Photo Pak #'s 36686, 36687 and 36688, taken by Det. Tech Joel Bourdon in Elkhart Police Department investigative Case No. 96-303-0189.
35. Bullet fragments recovered from the scene in Elkhart Police Department investigative Case No. 96-303-0189.
36. Hat recovered from the scene in Elkhart Police Department investigative Case No. 96-303-0189.
37. Trial exhibits of the Elkhart Circuit Court for State v. Parish.
38. Information Charging Attempted Murder in State v. Christopher Parish, filed November 6, 1996.
39. Information Charging Attempted Murder in State v. Christopher Parish and Keith Cooper, filed March 6, 1997.
40. Elkhart Circuit Court order of June 23, 1998 regarding Eddie Love failure to appear.
41. The records, including the pleadings, filings, orders, judgments, opinions, verdicts and transcripts of the Elkhart Circuit and Superior Courts and the Indiana Court of Appeals for all proceedings in State v. Parish.



42. The records, including the pleadings, filings, orders, judgments, opinions, verdicts, transcripts and exhibits of the Elkhart Circuit Court and the Indiana Court of Appeals for all proceedings in State v. Cooper.
43. Michael Kershner medical records from Elkhart General Hospital as contained in Elkhart Police Department Case No. 96-303-0189.
44. October 29, 1006 "Disposal of Bullet from Patient in Surgery": signed by Michael Posthuma.
45. Documents produced by Plaintiff in responses to Defendants' Requests for Production.
46. The plaintiff's answers to Interrogatories.
47. Any deposition needed for impeachment or rebuttal.
48. Documents produced in Plaintiff's Pretrial Disclosures.
49. Waiver of Search and Seizure dated January 31, 1997, signed by Keith Cooper from Elkhart City Police Department Case No. 96-303-0189.
50. Request for Laboratory Examination, from Elkhart City Police Department Case No. 96-303-0189 signed by Detective Joel Bourdon February 5, 1997.
51. Indiana State Police Certificate of Analysis dated June 17, 1997, Lab File # 97L-332, directed to Joel Bourdon.
52. Indiana State Police Certificate of Analysis dated June 20, 2002, Lab File # 97L-332, directed to Joel Bourdon.
53. Indiana State Police Certificate of Analysis dated March 8, 2004, Lab File # 97L-332 SUPPLEMENTAL, directed to Joel Bourdon.
54. Photo line-up signed by Michael Kershner January 29, 1997 from Elkhart Police Department Case No. 96-303-0189.
55. Photo line-up signed by Nona V. Canell January 29, 1997 from Elkhart Police Department Case No. 96-303-0189.
56. Photo line-up signed by Eddie Love January 10, 1997 from Elkhart Police Department Case No. 96-303-0189.
57. March 8, 1999 Christopher Parish letter to Steve Bower regarding appeal.
58. October 12, 1999 Christopher Parish letter regarding Petition to Transfer.



59. Any exhibits listed by the Plaintiff or the Co-defendant.
60. The records, including the pleadings, discovery, filings, orders and transcripts of the Lake County Court, Cause No. 45D11-0603-CT-00071, *Christopher Parish v. Mark Doty and Stephen Bower*.
61. Christopher Parish juvenile records from the Elkhart Police Department.
62. Elkhart Police Department Supplementary report dated June 24, 1998 by Det. Marvin Johnson, from Case No. 96-303-0189.

3. Defendant City of Elkhart's Exhibits

1. 9/9/1991 Elkhart Police Department Photograph of Christopher Parish 902831 (1 page)
2. 11/17/1993 Elkhart Police Department Photograph of Christopher Parish 902831 (1 page)
3. 4/7/1993 Elkhart Police Department Photograph of Christopher Parish 902831 (1 page)
4. 10/29/1996 Elkhart Police Department Crime Investigation Report, Reporting Officer Ptlm. T. Katowich, 10/29/1996 (2 pages)
5. 10/29/1996 Elkhart Police Department Statement of Jason Ackley, 10/29/1996 witnessed by Steve Rezutko (2 pages)
6. 10/29/1996 Elkhart Police Department Statement of Jennifer Dolph 10/29/1996 witnessed by Detective Steve Ambrose (2 pages)
7. 10/29/1996 Elkhart Police Department Statement of Eddie Love witnessed by Edward Windbigler (2 pages)
8. 10/29/1996 Elkhart City Police Department Tech. Report, Case No. 96-303-0189, Attempted Murder, Authored by Ptlm. Mark Dejong (2 pages)
9. 10/30/1996 Elkhart Police Department Fax Transmittal to News Media regarding the shooting of Kershner (1 page)
10. 10/30/1996 Elkhart Police Department Supplementary Report on offense of: Attempted Murder/Burglary Authored by Det. Michael Postuma 10/30/1996 (2 pages)



11. 10/30/1996 Elkhart Police Department Statement of Nona Canell, 10/30/1996 witnessed by Steve Rezutko (2 pages)
12. 10/30/1996 Nona Cannel I.D. of Christopher Parish (1 page)
13. 10/30/1996 Elkhart Police Department Statement of Jennifer Dolph 10/30/1996 witnessed by Steve Rezutko (1 page)
14. 10/30/1996 Three (3) Copies of Jennifer Dolph I.D. of Christopher Parish (3 pages)
15. 10/30/1996 Elkhart Police Department Supplementary Report on Offense of: Attempted Murder authored by Patrolman Brian Prugh (1 page)
16. 10/30/1996 Elkhart Police Department Legal Rights Advice Form signed by Chris Parish (1 page)
17. 10/31/1996 Elkhart Police Department Photograph of Christopher Parish (1 page)
18. 10/31/1996 Elkhart Police Department Arrest Cover Page (1 page)
19. 10/31/1996 Elkhart Police Department Arrest Report of Christopher Parish (1 page)
20. 10/31/1996 Elkhart Police Department Adult Social History of Christopher Parish (1 page)
21. 10/31/1996 Elkhart Police Department-Finger prints and hand prints of Christopher Parish (2 page)
22. 11/4/1996 Voluntary Statement given by Eddie Love witnessed by Steve Rezutko (1 page)
23. 11/4/1996 Photo Spread dated 11/4/1996 initialed by Eddie Love I.D. of Christopher Parish (1 page)
24. 11/6/1996 Information Charging Attempted Murder, A Class A Felony filed on November 6, 1996 signed by Larry Towns (1 page)
25. 3/6/1997 Amended Information Charging Two Counts, Count I, Attempted Murder, A Class A Felony, and Count II, Robbery Resulting in Serious Bodily Injury, A Class A Felony filed on March 6, 1997 by Stephen Rezutko (2 pages)
26. 11/6/1996 Entered Person (1 page)



27. 11/12/1996 Elkhart Police Department Statement of Jermaine Bradley, witnessed by Steve Rezutko (1 page)
28. 11/15/1996 Elkhart Police Department Supplementary Report on Offense of: Technician Report: (Attempted Murder & Burglary) Authored by Det. Tech. Joel Bourdon (2 pages)
29. 11/15/1996 Victim's Composite of Suspect 2, 11/15/1996 (1 page)
30. Nona Canell's Composite of Suspect #2 (1 page)
31. 11/19/1996 Elkhart Police Department Supplementary Report on Offense of: Attempted Murder authored by Detective Steve Ambrose regarding phone call from Chancie Stewart (1 page)
32. 1/8/1997 Statement of Eddie Love witnessed by Steve Rezutko (1 page)
33. 1/10/1997 Photo Spread dated 1/10/1997 initialed by Eddie Love I.D. of Keith Cooper (1 page)
34. 1/29/1997 Elkhart Police Department Statement of Nona Canell, 1/29/1997 witnessed by Steve Rezutko (1 page)
35. 1/29/1997 Nona Canell I.D. of Keith Cooper (1 page)
36. 1/29/1997 Elkhart Police Department Statement of Michael Kershner witnessed by Steve Rezutko (1 page)
37. 1/29/1997 Michael Kershner I.D. of Cooper dated 1/29/1997 (1 pages)
38. 1/30/1997 Elkhart Police Department Supplementary Report on Offense of: Attempted Murder/Robbery, Authored by Det. Steve Rezutko (4 pages)
39. 2/10/1997 Elkhart Police Department Statement of Debery Lee Coleman 2/10/1997 witnessed by Det. Edward Windbigler (2 pages)
40. 6/22/1998 Jury Trial Transcript of State of Indiana v. Christopher Parish
41. 6/22/1998 Exhibits offered into evidence during the State of Indiana v. Christopher Parish Jury Trial (17 pages)
42. 6/23/1998 Order-Eddie Love failed to appear for trial (1 page)
43. 6/23/1998 Attachment-Body Attachment for Eddie Love (1 pages)



44. 6/24/1998 Elkhart Police Department Supplementary Report on Offense of: Information by Detective Marvin Johnson (1 page)
45. 6/24/1998 Elkhart Police Department Statement of Jermaine Bradley, witnessed by Detective Faigh (1 page)
46. 6/26/1998 Verdict of Christopher Parish
47. 6/26/1998 Judgment of Conviction
48. 7/23/1998 Sentencing Hearing Transcript of State of Indiana v. Christopher Parish
49. 12/6/2005 Appellate Opinion in favor of Christopher Parish
50. State of Indiana v. Keith Cooper Trial Pleadings
51. 9/8/1997 Trial Transcript of State of Indiana v. Keith Cooper
52. 9/8/1997 Exhibits offered into evidence during the State v. Indiana v. Keith Cooper Trial
53. Criminal File of Eddie Love
54. Certified Weather Data, October 1996
55. 10/30/1996 Elkhart Truth Article dated 10/30/1996
56. Select medical records of Michael Kershner provided by the Elkhart Police Department (30 pages)
57. Employment File of Larry Towns
58. Christopher Parish Juvenile Records
59. Photographs of Crime Scene and Victim
60. Bullet fragments retrieved during the course of police investigation
61. Any exhibits identified by any other party
62. Impeachment exhibits as may be necessary but cannot reasonably be anticipated



5. Except as otherwise indicated, the authenticity of received exhibits has been stipulated, but they have been received subject to objections, if any, by the opposing party at trial as to their relevance and materiality. If other exhibits are to be offered, they may be done so only with leave of court.

Documentary or physical evidence must be marked numerically or alphabetically in advance of trial. All counsel shall confer in person and initial all exhibits of documentary or physical proof to be offered in evidence by the other parties to which there are no objections and which may be admitted without formal proof.

In the event there are objections, objecting counsel must state the objection and counsel offering the exhibit must state the reason for its admission, and each must provide the Court with the appropriate legal memoranda, citing points and authorities as to why the exhibit should or should not be admitted, at least five (5) days prior to trial. Failure to make the appropriate objections as indicated above will be deemed a waiver of the right to object at the time of trial, unless good cause is shown.

A bench book of exhibits should be prepared and delivered to the Court at the start of trial. If counsel desires to display exhibits to the members of the jury, then sufficient copies of such exhibits should be made available or enlarged photographic copies should be utilized.

#### K. Witnesses

##### 1. Defendants Steven Rezutko, Steven Ambrose, and Tom Cutler's Witnesses

1. Defendant Steve Rezutko
2. Defendant Steve Ambrose
3. Defendant Tom Cutler



4. Plaintiff Christopher Parish
5. Michael Christofeno  
115 W. Lexington  
Elkhart, IN  
(574) 295-6210
6. Officer Todd Katowich  
Las Vegas Police Department  
4750 W. Oakey Blvd.  
Las Vegas, NV 89102  
(702) 828-2962
7. Officer Edward Windbigler  
Elkhart Police Department
8. Officer Mark DeJong  
Elkhart Police Department
9. Officer Joel Bourdon  
Elkhart Police Department
10. Officer Michael J. Posthuma  
Elkhart Police Department
11. Deborah A. Bayer  
10119 Duffield Rd.  
Gaines, MI 48436
12. Officer Brian Prugh  
Elkhart Police Department
13. Christine Wrage  
120 W. Lexington Avenue # 323  
Elkhart, IN 46516-3117  
(574) 584-7169
14. Nona V. Canell
15. Christina Smallwood
16. Michael Kershner
17. Letisha Gary



18. Mark Doty  
409 W. Lexington  
Elkhart, IN 46516  
(574) 522-2119
19. Sherri Williams  
729 Monroe, Apt. D  
Elkhart, IN
20. Darrel Hicks  
731 W. Cleveland  
Elkhart, IN
21. O'Neal Clemmons  
731 W. Cleveland  
Elkhart, IN
22. Maurice Woods  
315 W. Wolf  
Elkhart, IN
23. Debery Lee Coleman  
3701 Dalhlia  
East Chicago, IN
24. Lisa Black  
Indiana State Police Crime Lab
25. Dennis Bechtel
26. Officer Marvin Johnson  
Elkhart City Police Department
27. Keith D. Cooper (a/k/a Keith D. Morehead)
28. Eddie Love
29. Jennifer Dolph
30. Jason Ackley
31. Jermaine E. Bradley
32. Vicki Becker  
Elkhart City Prosecutors Office



33. Brent Long  
Elkhart Police Department

2. Defendant City of Elkhart's Witnesses

1. Christopher Parish
2. Steve Ambrose  
53768 Pheasant Ridge  
Bristol, IN 46507  
Contract through counsel
3. Steve Rezutko  
26805 Sturdy Oak Drive  
Elkhart, IN 46514  
Contact through counsel
4. Tom Cutler  
22798 Selby Drive  
Elkhart, IN 46514  
Contact through counsel
5. Joel Bourdon  
Elkhart Police Department  
175 Waterfall Drive  
Elkhart, IN 46516  
(574) 295-7070  
Contact through counsel
6. Edward Windbigler  
Elkhart Police Department  
175 Westfall Drive  
Elkhart, IN 46516  
(574) 295-7070  
Contact through counsel
7. Michael Cristofeno  
115 W. Lexington  
Elkhart, IN 46516  
(574) 295-6210
8. Michael Kershner  
690 Dowis Chapel Rd.  
Woodbine, KY 40771  
(606) 528-8910



9. Nona Canell  
690 Dowis Chapel Rd.  
Woodbine, KY 40771  
(606) 528-8910
10. Jennifer Dolph  
Denton, TX  
Telephone number unknown
11. Eddie Love  
301 West Wolf  
Elkhart, IN 46516  
OR Westville Correctional Facility  
PO Box 473  
Westville, IN 46391
12. Jermaine Bradley  
Address unknown  
Telephone number unknown
13. Christine Wrage  
115 W. Lexington  
Elkhart, IN  
(574) 295-6210
14. Vicky Becker  
Office of the Prosecuting Attorney of Elkhart County  
301 S. Main St., Ste. 100  
(574) 296-1888
15. Deborah Bayer  
10119 Duffield Rd.  
Gaines, MI 48436  
(989) 271-9591  
Contact through counsel
16. Chris Smallwood  
2411 Highway 26  
Woodbine, KY 40701  
Telephone number unknown
17. Mark DeJong  
Elkhart Police Department  
175 Waterfall Drive  
Elkhart, IN 46516  
(574) 295-7070 Contact through counsel



18. Brent Long  
Elkhart Police Department  
175 Waterfall Drive  
Elkhart, IN 46516  
(574) 295-7070  
Contact through counsel
19. Dale Pfibsen  
Elkhart Police Department  
175 Waterfall Drive  
Elkhart, IN 46516  
(574) 295-7070  
Contact through counsel
20. Michel Posthuma  
Elkhart Police Department  
175 Waterfall Drive  
Elkhart, IN 46516  
(574) 295-7070  
Contact through counsel
21. Brian Prugh  
Elkhart Police Department  
175 Waterfall Drive  
Elkhart, IN 46516  
Contact through counsel
22. William Wargo  
Elkhart Police Department  
175 Waterfall Drive  
Elkhart, IN 46516  
(574) 295-7070  
Contact through counsel
23. Dennis Bechtel  
1103 Strong Avenue  
Elkhart, IN 46514
24. Todd Katowich  
6501 Vegas Drive  
Apt. 2138, Bldg. 43  
Las Vegas, NV 89108  
Telephone number unknown



25. Paul Converse  
146 Meadowlark Avenue  
Bremen, IN 46506  
Telephone number unknown
26. Larry Towns  
8530 North 22<sup>nd</sup> Avenue, #2012  
Phoenix, AZ 85021
27. Lisa Black  
Indiana State Police  
State Police Laboratory  
1550 East 181<sup>st</sup> Avenue  
Lowell, IN 46356  
(219) 696-6242
28. Mark Doty  
409 W. Lexington Avenue  
Elkhart, IN 46516-2816  
(574) 522-2119
29. Jason Ackley  
Address unknown  
Telephone number unknown
30. Sherri Williams  
729 Monroe, Apt. D  
Elkhart, IN  
Telephone number unknown
31. Darrel Hicks  
731 W. Cleveland  
Elkhart, IN  
Telephone number unknown
32. Clemmons O'Neal  
731 W. Cleveland  
Elkhart, IN  
Telephone number unknown
33. Maurice Woods  
315 W. Wolf  
Elkhart, IN  
Telephone number unknown



34. Elkhart Street and Sanitation Department  
2421 S. 17<sup>th</sup> Street  
Elkhart, IN 46516  
(574) 293-5581
35. Other officers of the City of Elkhart Police Department
36. Any witness listed by Plaintiff of Co-Defendants
37. Impeachment witnesses as may be necessary but cannot reasonably be anticipated

3. Plaintiffs' Witnesses

Plaintiffs adopt and incorporate the witness lists of the Defendants as if restated fully herein to the extent Plaintiffs' objections, if any, to said witnesses are overruled by the Court.

Plaintiffs add the following additional witnesses:

1. Kylup, Khadijah, Christopher, Jr., and Samantha Parish (Parish's children and sister, all contacted through Plaintiffs' counsel)
2. Keith Yoder  
717 McDonald  
Elkhart, IN
3. Chuck Stover  
708 East Indiana  
Elkhart, IN
4. Marlene & Arlene Scott  
310 Oliver Street  
Waterloo, IA
5. Wallace Scott  
Iowa Medical & Classification Center  
Box A, Highway 965  
Oakdale, IA
6. Yolanda Scott  
Reed Street  
Waterloo, IA



7. Tonyalita White & Floyd Edwards  
First Street  
Waterloo, IA
8. Samuel Alexander  
7834 Trumbul  
Chicago, IL
9. Tasha Fortute  
Chicago, IL
10. Jolanis Ervin  
Richard Handlon Correctional Center
11. Micheal Ervin  
Berrian County Correctional
12. Gloria Parish  
(Parish' mother, contacted through Plaintiffs)
13. Lucy & Joe Gary  
Winding Water Lanes,  
Elkhart, IN
14. Myron Donaldson  
Winding Water Lanes  
Elkhart, IN
- 15.. Stellana Neal 10000 Mishawaka Road  
Elkhart, IN
16. Brian Wheeler  
Indiana Correctional System
17. Andrew Scott  
750 Elm Tree Lane  
Boca Raton, FL 33486
18. Jonathan Brown  
56564 Woodbine Lane  
Elkhart, IN
19. Jackie Malone & Jackie Malone (mother and daughter)  
(believed to be incarcerated)  
2301 Lexington  
Elkhart, IN 46514



20. Cora Brown  
56564 Woodbine Lane  
Elkhart, IN
21. Record Keepers (if necessary): Elkhart Police Department, Indiana Department of Motor Vehicles, Michigan State Police, Berrian County Sheriff's Department.

4. In the event that there are other witnesses to be called at the trial, their names, addresses, and general subject matter of testimony will be reported to opposing counsel, with copy to the court, at least ten (10) days prior to the trial. Such witnesses may be called at trial only upon leave of the Court. This restriction shall not apply to rebuttal or impeachment witnesses, the necessity of whose testimony cannot reasonably be anticipated before trial.

L. Jury Instructions

The parties shall meet and prepare one complete set of jury instructions upon which they all agree. With respect to those proposed jury instructions upon which agreement cannot be reached, each party is permitted to file separately his or her additional proposed jury instructions. Each party will also be required to submit a statement of reasons why agreement could not be reached as to individual instructions tendered by the opposing party.

Requests for jury instructions must be filed with the court and sent by email to [Lozano\\_chambers@innd.uscourts.gov](mailto:Lozano_chambers@innd.uscourts.gov), no later than five (5) days before trial, subject to the right of counsel to supplement such requests during the course of the trial on matters that cannot reasonably be anticipated.

Plaintiffs' counsel shall file the instructions upon which the parties agree. Each party is responsible for filing its additional proposed instructions.



M. Amendments to the Pleadings

No amendments to the pleadings are anticipated, except as ordered by this Court pursuant to its decision on Defendants' currently pending Motions to Dismiss.

N. Trial Briefs

Trial briefs, if desired, shall be filed with the Court and exchanged among counsel at least ten (10) days before trial and should address the contested issues of law addressed in Section I of this Pre-Trial Order.

O. Motions in Limine

Motions in limine, with appropriate memorandum in support of same, should be filed no later than five (5) days before trial.

P. Voir Dire

The parties shall meet and prepare one (1) complete set of proposed voir dire questions upon which they all agree. With respect to those proposed voir dire questions upon which agreement cannot be reached, each party is permitted to file separately his or her additional proposed voir dire questions.

All voir dire questions shall be filed with the Court no later than five (5) days prior to the trial.

Q. Conference

This proposed final pre-trial order has been formulated after conference at which counsel for the respective parties have participated. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing by the Court. Hereafter, this order will control the course of the trial and may not be amended except by consent of the parties and the Court or by



order of the Court to prevent manifest injustice. The pleadings will be deemed incorporated and merged herein.

R. Settlement

The parties have discussed settlement, but have unable to reach agreement. They will continue to negotiate and will advise the Court immediately if settlement is reached.

S. Length of Trial

The probable length of trial is five to seven days. This case is scheduled for trial before a jury beginning on October 18, 2010 at 8:30 a.m.

Submitted by:

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